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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration
[I.D. 112699E]

American Lobster; Intent to Prepare an Environmental Impact
Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an environmental impact
statement (EIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS to assess the
impact on the human environment of possible management measures for the
American lobster fishery in the U.S. Exclusive Economic Zone (EEZ).
This NOI requests public input in the form of written comments on
issues that NMFS should consider in preparing the EIS. The document
will evaluate recommendations made by the Atlantic States Marine
Fisheries Commission (Commission) for lobster management actions in
Federal waters that complement management measures being taken by the
states under the provisions of the Atlantic Coastal Fisheries
Cooperative Management Act (ACFCMA). These recommendations include the
evaluation of historical participation as a basis for restricting trap
harvest of lobsters in the offshore EEZ, as well as in nearshore EEZ
areas between New York and North Carolina. Additional action
recommended by the Commission includes the implementation of vessel
upgrade restrictions in the offshore EEZ fishery and a ban on lobster
possession in certain Federal waters off the coast of New York. The
purpose of these measures, in combination with other management actions
already taken under the ACFCMA, is to end overfishing and to rebuild
stocks of American lobster throughout their range. Public hearings for
the EIS will be announced in the Federal Register at a later date.

DATES: Written comments on the intent to prepare the EIS must be
received no later than 5:00 p.m. Eastern Standard Time on or before
January 10, 2000.

ADDRESSES: Written comments should be sent to: Harold C. Mears,
Director, State, Federal, and Constituent Programs Office, Northeast
Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may
also be sent via fax to (978) 281-9117. Comments submitted via e-mail
or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Robert Ross, (978) 281-9234, fax (978)
281-9117.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council's Fishery Management Plan (FMP) for American Lobster was implemented in Federal waters for vessels with Federal fishing permits in 1983. Since approximately 80 percent of the fishery for American lobster occurs in state waters, the FMP objectives of maintaining a sustainable fishery and preventing overfishing of the resource could not effectively be achieved by Federal action alone. NMFS could no longer ensure that the FMP, which covered only Federal waters, was consistent with national standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires implementation of conservation and management measures to prevent overfishing. Therefore, a proposed rule was published in 1996 (61 FR 13478) to withdraw the Council FMP upon

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completion of an effective interstate management program.

The ACFCMA, enacted in 1993, includes provisions to ensure state compliance with interstate fishery management plans (ISFMPs) developed by the Commission. That legislation also provides authority for the implementation of management measures in Federal waters that are compatible with an ISFMP and consistent with the national standards specified in Section 301 of the Magnuson-Stevens Act. In December 1997, the Commission approved Amendment 3 to the American lobster ISFMP, which contained measures to end overfishing of the resource.

In March 1998, NMFS prepared a Draft EIS (63 FR 14922) that evaluated various management options in Federal waters to meet Magnuson-Stevens Act requirements regarding overfishing and the rebuilding of American lobster stocks in cooperation with the Commission under the ACFCMA. A proposed rule was then prepared on January 15, 1999 (63 FR 2708) that affirmatively responded to the overwhelming public comments urging NMFS to implement the Commission's plan in Federal waters. It also acknowledged that the preponderance of the fishery occurs in state waters and that, once the lobster FMP under the Magnuson-Stevens Act was withdrawn, state regulatory actions will be the key factor in rebuilding the lobster resource.

Subsequently, a Final EIS and a final rule were published in the Federal Register on May 28, 1999 (64 FR 29026), and on December 6, 1999 (64 FR 68228), respectively. The final rule transfers regulations for management of the lobster fishery under the Magnuson-Stevens Act (50 CFR part 649) to the ACFCMA (50 CFR part 697) and implements new measures consistent with the Commission's ISFMP. These new measures include the following: Extension of the current moratorium on new entrants into the EEZ fishery, designation of lobster management areas, near-shore and off-shore area trap limits, a 5-inch maximum carapace size in the Gulf of Maine, trap size restrictions, a trap escape vent size increase, trap tag allocations, and annual specification of additional management measures necessary to end overfishing and rebuild American lobster stocks. In addition, the NMFS' final rule restricts fishing effort in the EEZ based on fixed trap limits. This rule meets the Commission's request for NMFS to implement EEZ regulations compatible with the ISFMP for lobster and is consistent with the national standards of the Magnuson-Stevens Act, which must be met when implementing Federal regulations under the ACFCMA.

The Commission, on August 3, 1999, approved Addendum 1 to Amendment 3 of the ISFMP for the determination of trap limits based upon historical participation, rather than fixed trap limits, in Lobster Management Area 3 (offshore EEZ), and Areas 4 and 5 (nearshore EEZ areas south of New York). As a result of the Commission's Addendum 1 and its recommendations for NMFS to implement compatible measures in Federal waters, an advance notice of proposed rulemaking (ANPR) was published in the Federal Register on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need under the ACFCMA to

restrict access of Federal permit holders in the lobster EEZ fishery on the basis of historical participation. The ANPR also notified the public that NMFS was considering September 1, 1999, the publication date of the ANPR, as a potential control date.

Thirty-two comments were received in response to the ANPR. Responses were received from both the trap and non-trap sectors of the lobster industry. A majority (68 percent) of the respondents stated that participation in and access to the fishery should be restricted, with most of these individuals in favor of using a control date to substantiate historical participation. A majority of respondents who were in favor of establishing a control date recommended dates that were identified through the Lobster Conservation Management Team process, rather than the September 1, 1999, control date proposed by NMFS in the ANPR.

The respondents who were opposed to access restrictions included (1) relatively new entrants into the trap sector of the fishery, (2) limited access permit holders who had not actively participated in the trap fishery, (3) two commercial lobstermen's associations, and (4) the State of Maine Department of Marine Resources (DMR). Specifically, DMR commented that use of a control date to determine historical participation in the Federal waters of certain lobster fishery management areas should be considered a part of a comprehensive Federal action plan and not a stand-alone management measure. In response to these comments, NMFS intends to evaluate such action as part of a comprehensive management approach in both state and Federal waters.

Federal lobster permit holders will be affected by actions resulting from the subsequent EIS. Specifically, current Federal lobster permit holders may be found ineligible to fish for lobster in certain lobster management areas, and/or their capacity to fish for lobster may be diminished. Additional Commission recommendations under the ISFMP may also be addressed by NMFS in the EIS in an effort to develop Federal regulations that are compatible with Addendum 1. These include the following: Vessel length and horsepower upgrade restrictions during the years 2000 and 2001; a prohibition on the possession of lobsters in certain areas, including Fire Island, Moriches, Shinnecock, and Montauk, New York; consideration of conservation equivalency measures proposed by the State of New Hampshire; and adjustments to closed area boundaries in Cape Cod Bay, Nantucket Sound, and the Cape Cod Canal. Accordingly, NMFS requests public input on these proposed management measures to assist in assessing the impact of these and other associated measures on the human environment.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 6, 1999.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine
Fisheries Service.

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